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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

17  
18 SUCCESSFACTORS, INC. a Delaware  
corporation,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC., a Delaware  
22 corporation; and DOES 1-10,

23 Defendants.

Case No. C-08-1376 CW (BZ)

**MOTION FOR ADMINISTRATIVE RELIEF TO  
FILE UNDER SEAL EXHIBITS TO THE REPLY  
DECLARATION OF HENRY Z. CARBAJAL III IN  
SUPPORT OF PLAINTIFF'S SUCCESSFACTORS,  
INC.'S MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS, FURTHER INTERROGATORY  
ANSWERS AND PROPER PRIVILEGE LOGS;  
DECLARATION OF HENRY Z. CARBAJAL III IN  
SUPPORT THEREOF**

Date: September 3, 2008  
Time: 10:00 a.m.  
Judge: Hon. Bernard Zimmerman  
Place: Courtroom G, 15th Floor

Date of Filing: July 30, 2008  
Trial Date: May 11, 2009

Pursuant to Civil L.R. 7-11 and 79-5, Plaintiff SuccessFactors, Inc. ("SuccessFactors") hereby moves the Court for an Order permitting it to file under seal in this Court certain portions of deposition testimony and exhibits attached to the Reply Declaration of Henry Z. Carbajal III in Support of Plaintiff SuccessFactors, Inc.'s Motion to Compel Production of Documents, Further Interrogatory Answers, and Proper Privilege Logs ("Carbajal Declaration"), which have been designated as "Confidential," "Attorneys' Eyes Only," or "Outside Attorneys' Eyes Only," pursuant to the Stipulated Protective Order entered by the Court. (Dkt. No. 89.) The specific deposition testimony and production documents at issue are as follows:

1. Page 49, lines 1-13 and 17-18, Page 50, lines 14-16, and Page 226, lines 8-20 of the transcript of the May 29, 2008 Deposition of Dave Watkins, part of Exhibit 1 to the Carbajal Declaration.
2. Exhibits 2, 3, 4, 5, 6 and 7 to the Carbajal Declaration

The above cited exhibits to the Carbajal Declaration contain information that was designated as "Confidential," "Attorneys' Eyes Only," or "Outside Attorneys' Eyes Only," by Defendant Softscape, Inc., as they purportedly pertain to sensitive customer information, personal information or business practices.

Accordingly, SuccessFactors respectfully requests that the Court allow it to file Exhibits 1 through 7 of the Carbajal Declaration under seal in accordance with the Protective Order and Civil Local Rule 79-5.

Dated: August 20, 2008

FENWICK & WEST LLP

By: /s/ Henry Z. Carbajal III  
Henry Z. Carbajal III  
Attorneys for Plaintiff SUCCESSFACTORS, INC.

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

**DECLARATION OF HENRY Z CARBAJAL III**

I, Henry Z Carbajal III, declare as follows:

1. I am an attorney with the law firm at Fenwick & West LLP, counsel of record for Plaintiff SuccessFactors, Inc. ("SuccessFactors"). I make this declaration based on my personal knowledge, except where otherwise indicated, and if I am called as a witness, I would and could testify competently to the matters contained herein.

2. On April 23, 2008, this Court entered a Protective Order pursuant to the stipulation of the parties. Pursuant to section 10 of that order, any document filed in this action which contains confidential information shall be filed under seal in accordance with Civil Local Rule 79-5.

3. Accordingly, SuccessFactors respectfully requests that it be allowed to file under seal the following portions of exhibits and exhibits to the Reply Declaration of Henry Z. Carbajal III in Support of Plaintiff SuccessFactors, Inc.'s Motion to Compel Production of Documents, Further Interrogatory Answers, and Proper Privilege Logs ("Carbajal Declaration").

4. Page 49, lines 1-13 and 17-18 and Page 50, lines 14-16 of the deposition testimony attached as Exhibit 1 to the Carbajal Declaration, have been designated by Defendant Softscape, Inc. ("Softscape"), as "Confidential" under the Protective Order. Softscape thus maintains that this testimony contains information it (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is confidential and/or protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy. Plaintiff requests that the above portions of Exhibit 1 to the Carbajal Declaration be filed under seal.

5. Page 226, lines 8-20 of the deposition testimony attached as Exhibit 1 to the Carbajal Declaration, has been designated by Softscape, as "Highly Confidential-Attorneys' Eyes Only" under the Protective Order. Softscape thus maintains that this testimony contains confidential information disclosure of which would create a substantial risk of competitive harm or serious injury that could not be avoided by less restrictive means. Plaintiff requests that the above portions of Exhibit 1 to the Carbajal Declaration be filed under seal.

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1           6.       Exhibit 2 to the Carbajal Declaration is a copy of Softscape production document  
2       SSHC002, which comprises phone records of Softscape CEO Dave Watkins. Softscape  
3       designated these records as “Highly Confidential-Outside Attorneys’ Eyes Only” under the  
4       Protective Order. Softscape thus maintains that this document contains confidential information  
5       disclosure of which would create a substantial risk of competitive harm or serious injury that  
6       could not be avoided by less restrictive means. Plaintiff requests that Exhibit 2 to the Carbajal  
7       Declaration be filed under seal.

8           7.       Exhibit 3 to the Carbajal Declaration is a copy of Softscape production documents  
9       SSHC00240-246, which comprise phone records of various Softscape employees. Softscape  
10      designated these records as “Highly Confidential-Outside Attorneys’ Eyes Only” under the  
11      Protective Order. Softscape thus maintains that these documents contain confidential information  
12      disclosure of which would create a substantial risk of competitive harm or serious injury that  
13      could not be avoided by less restrictive means. Plaintiff requests that Exhibit 3 to the Carbajal  
14      Declaration be filed under seal.

15          8.       Exhibit 4 to the Carbajal Declaration is a copy of Softscape production documents  
16      SSHC00908-916, which comprise phone records of Softscape employees Michael Brandt, Dave  
17      Watkins and Lillian Watkins. Softscape designated these records as “Highly Confidential-  
18      Outside Attorneys’ Eyes Only” under the Protective Order. Softscape thus maintains that these  
19      documents contain confidential information disclosure of which would create a substantial risk of  
20      competitive harm or serious injury that could not be avoided by less restrictive means. Plaintiff  
21      requests that Exhibit 4 to the Carbajal Declaration be filed under seal.

22          9.       Exhibit 5 to the Carbajal Declaration is a copy of Softscape production document  
23      SSP002804, which comprises an e-mail string between Softscape employees. Softscape  
24      designated this document as “Highly Confidential-Attorneys’ Eyes Only” under the Protective  
25      Order. Softscape thus maintains that this document contains confidential information disclosure  
26      of which would create a substantial risk of competitive harm or serious injury that could not be  
27      avoided by less restrictive means. Plaintiff requests that Exhibit 5 to the Carbajal Declaration be  
28      filed under seal.

1           10. Exhibit 6 to the Carbajal Declaration is a copy of a document produced to  
2 SuccessFactors by non-party Larry Kurzner, numbered LKH001, which comprises an e-mail  
3 communication with a Softscape employee. Mr. Kurzner designated this document as “Highly  
4 Confidential-Attorneys’ Eyes Only” under the Protective Order, presumably due to the presence  
5 of human resources related information. Mr. Kurzner, and presumably Softscape, thus maintain  
6 that this document contains confidential information disclosure of which would create a  
7 substantial risk of competitive harm or serious injury that could not be avoided by less restrictive  
8 means. Plaintiff requests that Exhibit 6 to the Carbajal Declaration be filed under seal.

9           11. Exhibit 7 to the Carbajal Declaration is a copy of Softscape production document  
10 SSP00865, which comprises an e-mail string. Softscape designated this document as  
11 “Confidential” under the Protective Order. Softscape thus maintains that this document contains  
12 information it (i) would not normally reveal to third parties except in confidence or has undertaken  
13 with others to maintain in confidence, or (ii) believes in good faith is confidential and/or protected  
14 by a right to privacy under federal or state law or any other applicable privilege or right related to  
15 confidentiality or privacy. Plaintiff requests that Exhibit 7 to the Carbajal Declaration be filed  
16 under seal.

17           12. The exhibits enumerated above are the only portion of SuccessFactors filing to be  
18 filed under seal.

19           13. SuccessFactors will lodge with the Clerk sealed copies of the above documents.

20           14. SuccessFactors will notify counsel for Defendants of their obligation to file a  
21 declaration supporting the confidentiality of their documents and information referenced above  
22 under Civil L.R. 79-5(d).

23           15. Pursuant to Civil L.R. 79-5, SuccessFactors intends to file publicly or withdraw  
24 from the record any exhibits that it requested to be filed under seal based on the confidentiality  
25 designations where such designation is withdrawn by the Defendants, or SuccessFactors’ request  
26 is denied by this Court.

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1 I declare under penalty of perjury under the laws of the United States of America and the  
2 State of California that the foregoing is true and correct. Executed this 20th day of August 2008  
3 at Mountain View, California.

4 By: /s/ **Henry Z. Carbajal III**  
5 Henry Z. Carbajal III  
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15 NORTHERN DISTRICT OF CALIFORNIA  
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18 SUCCESSFACTORS, INC. a Delaware  
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20 v.

21 SOFTSCAPE, INC., a Delaware  
22 corporation; and DOES 1-10,

23 Defendants.

Case No. C-08-1376 CW (BZ)

**[PROPOSED] ORDER GRANTING PLAINTIFF'S  
MOTION FOR ADMINISTRATIVE RELIEF TO  
FILE UNDER SEAL EXHIBITS TO THE REPLY  
DECLARATION OF HENRY Z. CARBAJAL III IN  
SUPPORT OF PLAINTIFF'S SUCCESSFACTORS,  
INC.'S MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS, FURTHER INTERROGATORY  
ANSWERS AND PROPER PRIVILEGE LOGS**

Date: September 3, 2008  
Time: 10:00 a.m.  
Judge: Hon. Bernard Zimmerman  
Place: Courtroom G, 15th Floor

Date of Filing: July 30, 2008  
Trial Date: May 11, 2009

**[PROPOSED] ORDER GRANTING PLAINTIFF'S  
MOTION FOR ADMINISTRATIVE RELIEF TO FILE UNDER SEAL**

On this day, the Court considered Plaintiff SuccessFactors, Inc.'s ("SuccessFactors") Motion for Administrative Relief to File Under Seal Exhibits to the Reply Declaration of Henry Z. Carbajal III in Support of Plaintiff's SuccessFactors, Inc.'s Motion to Compel Production Of Documents, Further Interrogatory Answers and Proper Privilege Logs ("Motion to Seal")

After due consideration, **IT IS HEREBY ORDERED AND ADJUDGED** that SuccessFactors' Motion to Seal is **GRANTED**.

**IT IS FURTHER ORDERED** that the following portions of exhibits and exhibits to the Reply Declaration of Henry Z. Carbajal III in Support of Plaintiff SuccessFactors, Inc.'s Motion to Compel Production of Documents, Further Interrogatory Answers, and Proper Privilege Logs ("Carbajal Declaration") are hereby **FILED UNDER SEAL**:

1. Page 49, lines 1-13 and 17-18, Page 50, lines 14-16, and Page 226, lines 8-20 of the transcript of the May 29, 2008 Deposition of Dave Watkins, part of Exhibit 1 to the Carbajal Declaration; and
2. Exhibits 2, 3, 4, 5, 6 and 7 to the Carbajal Declaration.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Magistrate Judge Bernard Zimmerman  
United States Magistrate Judge